

6 A Yes.

7 Q Were there any representations made by
8 you in the course of that discussion as to what
9 had happened or what was believed to have
10 happened?

11 A I may have summarized the same
12 information that I had summarized to Ms. McNeil.
13 I don't recall specifically.

Page 21

4 Q When you discussed sending Ms. McNeil
5 copies of the documents you had received from
6 Mr. Easton, you indicated to her that they
7 included post bid submission changes?

8 A Yes.

9 Q Did you discuss with her the manner in
10 which the post bid submission changes had been
11 made?

12 A No. I wasn't, frankly, all that clear
13 on it at that point.

14 Q In that regard, Mr. Sullivan, would you
15 characterize the situation that day as being one
16 of substantial confusion?

17 A Yes.

18 Q On your part?

19 A Certainly on my part, and it seemed
20 like on Mr. Easton's part as well. There was a
21 crisis and it was -- there was a lot going on,

22 it was very difficult to sort of get one's arms
23 around all the facts.

Page 28

21 Q On the 23rd of July 1996, Mr. Sullivan,
22 did you have any communication with Mr. Breen?
23 A No.

Page 29

1 MR. COHEN: You said July.
2 MR. CARROCCIO: Did I say July in
3 asking that question?
4 THE WITNESS: Yes. January. January
5 23rd.
6 MR. CARROCCIO: I'm sorry. The 23rd of
7 January 1996?
8 THE WITNESS: I did not have any
9 contact with Mr. Breen that day.

Page 32

19 Q Mr. Sullivan, I'd like to hand you a
20 document that carries the San Mateo Group
21 letterhead.
22 MR. CARROCCIO: I'm providing also a
23 copy to the Bureau.

Page 33

1 BY MR. CARROCCIO:
2 Q You indicated that Mr. Easton sent you
3 materials regarding the bidding error?
4 A Yes.

5 Q Is this one of those? Is this some of
6 those materials?

7 A Yes, it is.

8 MR. CARROCCIO: I would like to have
9 this marked as Sullivan Exhibit No. 3. Does
10 anybody have any problems with it at this point?

11 (No objections.)

12 (The item referred to above was
13 marked for identification as
14 Deposition Exhibit No. 3.)

15 BY MR. CARROCCIO:

16 Q Mr. Sullivan, I would like to direct
17 your attention to the front page of that
18 document.

19 A Yes?

20 Q It indicates that it is a four page
21 document.

22 A Uh-huh. (Nodding affirmatively.)

23 Q Immediately under that, there is a

Page 34

1 message that says "Per conversation."

2 A Uh-huh. (Nodding affirmatively.)

3 Q Had you had a conversation with Mr.
4 Easton prior to this?

5 A Apparently, I had.

6 Q Was he referring to a conversation of
7 the 24th or to a conversation of the 23rd? Can

8 you recall?

9 A I can't recall.

10 Q During your conversations with him on
11 the 23rd, had you directed or requested that he
12 prepare a statement?

13 A I had asked him to start writing down
14 the facts as he recalled them, in a fairly
15 exhaustive fashion, which I would then use to
16 prepare an Affidavit of Declaration in Support
17 of a Waiver Request. This was one draft of a
18 statement of facts by him that would be used for
19 that purpose, at least by me.

20 Q Mr. Sullivan, was it your intention
21 that a contemporaneous record be created by Mr.
22 Easton?

23 A A contemporaneous record of what?

Page 35

1 Q Of the activities of the 23rd?

2 A I'm not understanding.

3 Q I'm sorry. It was my fault the way I
4 started. You indicated that you asked Mr.
5 Easton to start making extensive notations as to
6 what he recalled about the activities of that
7 day surrounding the bidding error?

8 A Yes.

9 Q In making that request of him, was it
10 your intention to have him create a

11 contemporaneous record of those events?

12 A Well, that would be an after the fact
13 record of them from his recollection, obviously.
14 It's not contemporaneous if it's created on the
15 24th regarding the 23rd.

16 Q So that request to him was made on the
17 24th, not on the 23rd?

18 A I'm sure I asked him on the 23rd to
19 start thinking about it. I may have asked him
20 to do it in a particular form, or something like
21 that, on the 24th; I don't know.

22 Q Do you recall if this is the first
23 rendition of any statement?

Page 36

1 A I think I only got one draft of this
2 from him. I can't say for certain. I know I've
3 gotten a couple of different drafts. I know I
4 got a draft and I got additional information in
5 telephone conversations and follow-up -- I may
6 have gotten some follow-up facts of additional
7 information. I think this is the only draft I
8 got of the statement.

9 Q So this was represented to you as Mr.
10 Easton's best recollection and best record of
11 the events of the 23rd?

12 A As of the time he sent it, yes. As I
13 say, his recollection evolved further through

14 the day.

Page 39

3 Q In the communications to and from PCS
4 2000 personnel -- or between PCS 2000 personnel
5 and you -- was there any indication that the
6 cause of the bidding error had been determined
7 by anyone at PCS 2000?

8 A I don't think anybody, in any
9 conversations I had with PCS 2000 personnel,
10 ever claimed to have determined the cause of the
11 bidding error. It remains undetermined to this
12 date.

13 Q By this date, you mean --

14 A 1997.

15 Q The 25th of November, 1997?

16 A Yes.

17 Q In your conversations of the 24th of
18 January, 1997 with Mr. Lamoso, did Mr. Lamoso in
19 any way advocate blaming the FCC for the bidding
20 error?

21 A No, I don't believe he did.

22 Q I'd like to ask the same question with
23 regard to Mr. Parks?

Page 40

1 A I don't recall Dan advocating that, no.

2 Q Mr. Breen?

3 A No.

4 Q Mr. Reise?

5 A No.

6 Q Mr. Odell?

7 A I don't recall whether Mr. Odell was on
8 any of the calls, but I certainly do not recall
9 him advocating blaming the FCC.

10 Q Mr. Martinez?

11 A No.

12 Q Mr. Goldstein?

13 A No.

14 Q Mr. Easton?

15 A Initially, he had taken the position
16 that it must have been the FCC's fault, but he
17 subsequently agreed that it must have been
18 caused by some sort of human error at the PCS
19 2000 end.

20 Q Okay. And he had reached that position
21 by the 24th?

22 A Yes.

Page 41

18 Q Is it fair to say, Mr. Sullivan that by
19 the 24th of January 1996, no one at PCS 2000 or
20 associated with PCS 2000 was alleging that the
21 bidding error was the fault of the Federal
22 Communications Commission?

23 A That's right.

Page 43

6 Q Was Mr. Breen party to any of the
7 communications you had on the 24th with PCS 2000
8 personnel?

9 A He was, in that I know I had some
10 discussions with him about the need to get the
11 bid withdrawn. I asked him if he had any
12 information regarding how the bidding error
13 could have occurred, and he didn't really have
14 any information. He said that was -- you know,
15 Terry was the one who was here, it was on his
16 watch, or something to that effect.

17 I know I, at some point on the 24th or
18 25th, sent a draft of a waiver request to
19 several persons for review, including Javier,
20 Quentin, and Terry, but as I recall, Quentin
21 didn't have much substantive input, other than
22 to say that we should make clear that we are not
23 blaming the FCC at this point.

Page 47

11 Q Mr. Sullivan, just before going off the
12 record, we had talked about the events of the
13 24th of January 1996.

14 A Uh-huh. (Nodding affirmatively.)

15 Q Is it fair to say that at the end of
16 that day, PCS 2000 had instructed you to begin
17 the preparation of a waiver request to the
18 Federal Communications Commission?

19 A Yes.

20 Q Is it fair to say that at the end of
21 that day, PCS 2000 had withdrawn its bid in an
22 effort to rectify the erroneous bid?

23 A Yes.

Page 48

1 Q Is it fair to say that at the end of
2 that day, no one affiliated with PCS 2000
3 advocated blaming the FCC for the bidding error?

4 A To the best of my knowledge, yes.

5 Q Mr. Sullivan, I'd like to show you a
6 document that has the letterhead of your law
7 firm.

8 MR. CARROCCIO: I'm also providing a
9 copy to the Reporter and to the Bureau.

10 BY MR. CARROCCIO:

11 Q Can you identify this document, please?

12 A Yes, this is a draft of a waiver
13 request that was transmitted to Javier Lamoso,
14 Fred Martinez, Terry Easton and Quentin Breen on
15 the 25th of January 1996.

16 Q And this draft had been prepared in
17 your office?

18 A Yes.

19 Q And was there an intention to file this
20 request by the 26th of January?

21 A Yes.

22 Q Was this your first draft?

23 A I believe it is. I can't say that with

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1 absolute certainty, but I believe it is.

2 Q Mr. Sullivan, I'd like to direct your
3 attention to the first full paragraph on page
4 numbered 3 of the draft waiver request.

5 A The first full paragraph?

6 Q The first full paragraph, please.

7 A The paragraph that begins "PCS 2000
8 promptly took steps..."?

9 Q Correct. And I'd like to specifically
10 direct your attention to the penultimate
11 sentence of that paragraph.

12 A The penultimate sentence is, "Shortly
13 thereafter, counsel informed the Auctions
14 Divisions staff of the error."

15 Q Okay. And that is after the --
16 "Shortly thereafter..." refers to shortly after
17 what?

18 A After Mr. Easton contacted the FCC and
19 supplied the FCC with copies of his
20 spreadsheets.

21 Q So you confirmed to the FCC -- or this
22 letter confirmed to the FCC that your contact
23 was immediately following the contact made by

Page 50

1 Mr. Easton?

2 A Yes.

3 Q Moving back one sentence, where you
4 indicate, "He supplied Mr. Segalos with copies
5 of spreadsheet printouts indicating the bids
6 that PCS 2000 believed it had submitted..." --

7 A Yes?

8 Q -- whose construction is that sentence?

9 A I assume it's my construction since I
10 was the drafter of the letter.

11 Q Okay. Did you discuss that sentence
12 with the addressees of this draft?

13 A I'm sure I did. I don't recall a
14 specific conversation.

15 Q And what was that sentence intended to
16 convey?

17 A That sentence was intended to convey
18 that this spreadsheet indicates what PCS 2000
19 intended to, and believed it had, bid.

20 Q Did it intend to convey that that was
21 the actual bid received by the FCC?

22 A No.

23 Q Was it intended to indicate that there

Page 51

1 had been an error at the FCC with regard to the
2 bid?

3 A No.

4 Q And you are the author of that
5 sentence?

6 MR. TOLLIN: He said he wasn't sure.

7 THE WITNESS: I'm the author of the
8 document. Whether I specifically wrote that
9 sentence, I can't say for sure.

10 BY MR. CARROCCIO:

11 Q At the time you included that sentence
12 in this document, did you believe that sentence
13 to be an accurate depiction of the situation?

14 A That was my understanding based on
15 input from Mr. Easton.

16 Q Was the sentence intended to convey
17 that PCS 2000 was uncertain that this bid had
18 actually been submitted?

19 A Yes.

20 Q Colloquially, Mr. Sullivan, did this
21 sentence have a little bit of wiggle room in it?

22 A Yes. Since we weren't sure how the
23 error occurred or where, this sentence was

Page 52

1 intended to indicate that PCS 2000 believed this
2 was the bid that had been submitted, but could
3 not verify that it, in fact, was the bid that
4 was submitted.

5 Q So it was intended to be accurate to
6 the best of your knowledge and belief?

7 A Yes.

8 Q It was intended to be true to the best
9 of your knowledge and belief?

10 A Yes.

11 Q It was intended to be candid to the
12 best of your knowledge and belief?

13 A Yes.

14 Q And it was, to your understanding, the
15 best possible depiction of the situation then
16 known to you?

17 A Yes.

18 Q And were those concepts also conveyed
19 to and explained to or discussed with the
20 addressees of this draft?

21 A I can't say for certain.

22 Q Can you say for certain that they were
23 not discussed with the addressees of this draft?

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1 A No, I can't.

2 MR. TOLLIN: Was this marked?

3 MR. CARROCCIO: Yes, it was. It was
4 number --

5 MR. WEBER: No, it was not.

6 MR. CARROCCIO: Oh, I'm sorry. Could
7 we have that marked as Sullivan Deposition
8 Exhibit No. 4. Any problems with that?

9 (No objections.)

10 (The item referred to above was
11 marked for identification as
12 Deposition Exhibit No. 4.)

13 BY MR. CARROCCIO::

14 Q Mr. Sullivan, I'm now providing you
15 with another document. Again, it has the
16 letterhead of your firm.

17 I'd ask you if you could identify this
18 document?

19 A This is a fax transmitted to Javier
20 Lamoso, Fred Martinez, Terry Easton and Quentin
21 Breen indicating that it has a redraft of the
22 waiver request.

23 MR. CARROCCIO: I'd like to have this

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1 document marked as Sullivan Deposition Exhibit
2 No. 5. Any problems on that score for anybody?

3 (No objections.)

4 (The item referred to below was
5 marked for identification as
6 Deposition Exhibit No. 5.)

7 BY MR. CARROCCIO:

8 Q Mr. Sullivan, is it fair to
9 characterize this as a modification of your
10 Exhibit No. 4?

11 A Yes. It would be my practice, if I
12 make changes, to indicate that it is a redraft

13 or a revised version, as is indicated on the
14 cover sheet.

15 Q Mr. Sullivan, would you be able to
16 point out any changes that had been made, to
17 your recollection?

18 A I don't recall what changes were made.

19 Q Mr. Sullivan, could I direct your
20 attention to the second full paragraph on page
21 numbered 3 of this document?

22 A Okay.

23 Q Mr. Sullivan, that paragraph, again,

Page 55

1 the penultimate sentence continues to indicate
2 that you spoke with the Federal Communications
3 Commission shortly after Mr. Easton; is that
4 correct?

5 A Yes. Let me clarify one thing. Both
6 this draft and the previous draft describe Mr.
7 Segalos -- with whom I think Mr. Easton had had
8 a conversation -- as being an official with the
9 Commission's auction contractor. This is what
10 Mr. Easton had told me what Mr. Segalos was.
11 He, in fact, was an FCC employee. But I was not
12 aware of that at the time.

13 Q Mr. Sullivan, the sentence before that,
14 does it still indicate that the documents Mr.
15 Easton had transmitted to the Commission were

16 those that PCS 2000 believed it had submitted?

17 A That's what this draft says, yes.

18 Q And it still had the connotations we
19 discussed with regard to the previous draft?

20 A Yes.

21 Q And, Mr. Sullivan, was this draft also
22 directed to the four individuals named on the
23 cover sheet?

Page 56

1 A It was addressed to the four
2 individuals on the cover sheet, Messrs. Lamoso,
3 Martinez, Easton, and Breen.

4 Q Mr. Sullivan, unlike the document No.
5 4, which seems to have a confirmation that the
6 document was sent to Mr. Easton and Mr. Breen,
7 this one does not have a confirmation sheet,
8 document 5 does not have a confirmation sheet.
9 That does not mean to infer that it was not
10 actually sent, does it?

11 A No. To the best of my knowledge, this
12 was sent, but sometimes the confirmation sheet
13 from the fax machine doesn't get associated with
14 the document.

15 Q Mr. Sullivan, I hand you another
16 document, again on the letterhead of your firm.
17 Can you identify this document, please?

18 A This is the final version of the waiver

19 request, bearing the receipt stamp of the FCC of
20 January 26, 1996.

21 Q Mr. Sullivan, can you tell us if this
22 document is, in its entirety, the document that
23 was delivered to and received by the FCC on

Page 57

1 January 26, 1996?

2 A It appears to be, yes.

3 Q No pages have been changed or
4 substituted?

5 A No.

6 Q So that the receipt stamp of the
7 Federal Communications Commission on the first
8 page would be valid and accurate for all pages?

9 A That is my belief, yes.

10 Q And you have no reason to believe
11 otherwise?

12 A I have no reason to believe otherwise.

13 Q Has this document been in your
14 possession since the date it was received by the
15 Federal Communications Commission?

16 A Yes, it has been --

17 Q The original of this document?

18 A The original stamped and returned has
19 been in my custody or the firm's custody, and
20 this was retrieved from the firm's central files
21 last night.

22 Q Mr. Sullivan, to page 3, please, second
23 paragraph.

Page 58

1 A Yes?

2 Q Are you -- on the penultimate sentence,
3 that has not changed?

4 A The penultimate sentence has not
5 changed, I don't believe. Do you mean, "Shortly
6 thereafter, counsel informed senior Auctions
7 Division staff officials of the error?" There
8 may be some minor word changes.

9 Q But the intent --

10 A It says, "...senior Auctions Division
11 staff officials..." as opposed to simply,
12 "...Auction Division staff..." I also note that
13 it now correctly identifies Mr. Segalos as an
14 FCC auction official.

15 Q Two sentences previously?

16 A Yes.

17 Q The penultimate sentence is still
18 intended to convey the same message of your
19 prompt contacting of the Federal Communications
20 Commission?

21 A After Mr. Easton's initial contact and
22 transmission, yes.

23 Q And the sentence before that, again,

Page 59

1 remains unchanged from the two previous drafts?

2 A Yes.

3 Q And is still intended to convey your
4 best knowledge and belief?

5 A As of that time, yes.

6 Q And this document was submitted after
7 the drafts having been reviewed by Mr. Lamoso?

8 A Mr. Lamoso, Mr. Martinez, Mr. Easton,
9 and Mr. Breen, as well as by attorneys from my
10 firm.

11 Q And the import of the sentences that we
12 were just discussing still had the same import
13 as we discussed in the context of the drafts?

14 A Yes.

15 Q From the time of the first draft, it
16 was always intended that this document be filed
17 with the FCC on the 26th of January 1996?

18 A Yes.

19 Q Can you remember approximately what
20 time of day it was filed with the FCC?

21 A I don't know for certain. I know that
22 from the previous cover sheets, it indicated
23 that we wanted to file as soon as possible. The

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1 normal practice in the firm was to send a
2 messenger over to the FCC at about a quarter to
3 five or five o'clock. It is possible, but I

4 frankly don't recall, but it is possible that we
5 may have sent a messenger over to the FCC to
6 make this filing earlier. I just don't know.

7 Q Given the receipt stamp reflected on
8 the cover, is it possible that it was filed with
9 the Federal Communications Commission after 5:30
10 p.m. on the 26th of January 1996?

11 A No. The Secretary's office closes at
12 5:30, so unless one was in line to have one's
13 documents received by that time, one would have
14 been turned away.

15 Q Mr. Sullivan, let me direct your
16 attention to the previous -- both previous
17 drafts -- documents number --

18 A Has this one been numbered?

19 Q Yes, number 6, I believe.

20 MR. WEBER: No, it has not been
21 numbered.

22 THE COURT REPORTER: It's Exhibit No.
23 6.

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1 MR. CARROCCIO: Okay. Thank you.

2 (The item referred to above was
3 marked for identification as
4 Deposition Exhibit No. 6.)

* * * * *

7 THE WITNESS: You've asked about was it

8 the intention to convey certain impressions to
9 the FCC in this letter and in the previous
10 drafts. And I want to clarify that the
11 intention to which I am speaking is my own
12 intention as the drafter of the letter based on
13 the input that has been given to me by PCS 2000
14 officials. I cannot state, obviously, what
15 their subjective intentions were.

16 BY MR. CARROCCIO:

17 Q However, these drafts were transmitted
18 to each of the four individuals shown on the fax
19 cover sheets?

20 A And they had an opportunity to make any
21 changes they wanted.

22 Q And did you discuss these drafts with
23 those individuals?

Page 62

1 A Yes.

2 Q Now, Mr. Sullivan, going back to the
3 drafts, Documents 4 and 5 --

4 A Yes?

5 Q -- on the sheets after the cover
6 sheets, they are all dated January 26, 1996; is
7 that correct?

8 A Yes, that's correct.

9 Q Even though they were, in fact,
10 transmitted on January 25?

11 A Yes.

12 Q Did that reflect an intention on your
13 part and the part of PCS 2000 to have this
14 waiver request filed no later than the 26th of
15 January 1996?

16 A Yes.

17 Q I direct your attention to the
18 declaration of Javier Lamoso attached to your
19 Deposition Exhibit No. 6.

20 A Yes?

21 Q That indicates it was executed January
22 26, 1996?

23 A Yes.

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1 Q And the fax line at the top indicates
2 it was received at your firm at 12:52 p.m. on
3 that date?

4 A No, it indicates that it was sent in
5 draft form to Mr. Lamoso for his signature at
6 that time. If you look at the left, it says
7 "Sent By: WBKQ."

8 Q Thank you. And was it faxed back to
9 your office?

10 A Yes.

11 Q And received in time to be filed on
12 that date?

13 A Yes.

14 Q The following declaration of Anthony T.
15 Easton, again it is executed on January -- it
16 indicates it was executed on January 26. Was
17 that conveyed by your office to Mr. Easton at
18 approximately 1:55 p.m.?

19 A Yes, it was.

20 Q On the 26th?

21 A That's what the fax header indicates.

22 Q And it was received back by your office
23 in time to be filed that day?

Page 64

1 A Yes.

2 Q Do you know where Mr. Lamoso and Mr.
3 Easton were that day?

4 A They were in San Mateo.

5 Q And in transmitting their declarations
6 to them and requesting the return of them, did
7 you indicate an intention to file the waiver
8 request that day?

9 A Yes.

10 MR. CARROCCIO: I'd just like to verify
11 for the record that this has been marked as
12 Sullivan Deposition Exhibit No. 6.

13 BY MR. CARROCCIO:

14 Q Let me just go back to your deposition
15 Exhibit No. 6 one more time, page 3, second
16 paragraph, penultimate sentence.

17 A Yes?

18 Q "Shortly thereafter, counsel informed
19 senior Auctions Division staff officials of the
20 error."

21 A Yes.

22 Q When you contacted the Commission, did
23 you indicate that PCS 2000 was blaming the

Page 65

1 Commission for the error?

2 A I indicated initially that we wanted to
3 have the Commission verify whether the \$180
4 million bid was as received. I believe I asked
5 them to check the keystrokes, as Mr. Easton had
6 suggested to me.

7 And in my second conversation with the
8 FCC on January 23rd, I was informed, I believe
9 by Ms. Ham but I can't say for certain it was
10 her, that the bid was posted as received.

11 Q Did you indicate in the course of those
12 conversations, either of those conversations,
13 that PCS 2000 was no longer blaming the FCC for
14 the bidding error?

15 A On the 23rd, I don't believe I was, no.
16 I don't believe I made that statement to them.

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8 Q At the top of the third page --

9 A Yes?

10 Q -- there's an indication "QLB."
11 A Yes.
12 Q And that would refer to who?
13 A Quentin Breen.
14 Q And does that indicate what Mr. Breen's
15 comments might have been?
16 A I believe it does, yes.
17 Q Can you read that to us, in case
18 anybody has a question with regard to your
19 handwriting, please?
20 A Yes. "QLB . Asked what the problem.
21 She said she didn't want to have anything to do
22 with anything improper because might want to
23 become member of the bar. She said to QLB Terry

Page 73

1 had said things on recorded FCC line that she
2 didn't think were correct and she didn't want to
3 be involved. She said Terry was trying to blame
4 on FCC. QLB just listened."

Page 74

1 THE COURT REPORTER: This document has
2 been marked as Exhibit 9.

* * * * *

19 Q In any of your conversations with Mr.
20 Breen, did you discuss Mr. Breen's meeting with
21 Cynthia Hamilton on January 26, 1996?

22 A I have discussed that with him. I